

KEYWORD: Guideline F

DIGEST: Each cases must be decided on its own merits. Adverse decision affirmed.

CASENO: 14-00173.a1

DATE: 08/08/2014

DATE: August 8, 2014

In Re:	)	
	)	
-----	)	ISCR Case No. 14-00173
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 27, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case

be decided on the written record. On June 30, 2014, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant's request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable security clearance decision.

The Judge made the following findings: Applicant is 51 years old. He became unemployed in the spring of 2011. He was then hired for a position that paid him \$19,000 less than his previous position. The lost income resulted in Applicant becoming delinquent on his mortgage payments. His house went into foreclosure at the end of 2011, after he could not execute a short sale. Applicant claimed that he was unable to negotiate payment arrangements because the lender was uncooperative. Applicant indicated in his answer to the SOR that he had never been contacted by the mortgage lender and so he presumed the loan was a charge off with the foreclosed home. In his response to the Government's File of Relevant Material (FORM), he indicated he could not make arrangements to repay the debt because the mortgage lender was unable to open or identify his mortgage loan. Applicant asserted that a delinquent medical bill in the amount of \$3,354 resulted from confusion between his primary and secondary insurance carriers. According to Applicant, after paying the entire bill, the secondary carrier rescinded the payment, claiming that it was only responsible for paying part of the bill. When the primary insurance carrier was billed, it would not pay because the bill had not been submitted within a specified period of time. The bill was transferred to a collection agency who increased the original bill from \$2,200 to \$3,354. The medical services were provided in 2007 and Applicant disputed the debt in 2009. The account is unresolved. Applicant opened a credit card account in 2006. A judgment for \$6,137 was obtained against him in 2009. Evidence indicates that Applicant satisfied the judgment in 2011. The account is resolved.

The Judge reached the following conclusions: The credit reports and Applicant's admissions show that the medical account and the second mortgage account have been delinquent for more than two years. He provided no documentation to support his claims of trying to resolve the second mortgage. Failing to negotiate payment arrangements because of the mortgage lender's lack of cooperation contradicts Applicant's subsequent claim of failing to negotiate payment arrangements because the lender could not open or identify the loan. The contradiction undercuts the credibility of his stated efforts to resolve the mortgage. Applicant has not taken any documented action in more than two years to resolve the second mortgage. Formally disputing the medical account does not relieve Applicant of providing documentation showing that he contacted the creditor and insurance carriers to negotiate a payment plan regarding the account. He has not acted responsibly under the circumstances. Applicant has never had financial counseling or attempted to consolidate his debts. The current delinquent status of the mortgage and medical accounts shows that there are no clear indications his two delinquent debts are being resolved or are under control. Without documented action to resolve his two delinquent debts, it is likely his financial problems will persist in the future. Applicant has failed to overcome the security concerns raised under the financial considerations guideline.

Applicant argues that there is no contradiction between his statement that the second mortgage creditor was uncooperative and his statement that payment negotiations failed because the lender could not identify or open the loan. Applicant also asserts that there is no history of his not meeting his financial obligations, the unsatisfied medical bill was the result of negligence on the part of the creditor and the insurance companies, and factors in mitigation apply to his case which the Judge overlooked. Applicant's various arguments do not establish error on the part of the Judge.

Applicant argues that the Judge failed to consider all the record evidence, and that the Judge erred by not applying the mitigating conditions in his favor. Applicant's assertions fail to establish error on the part of the Judge.

Applicant makes reference to a state statute he claims makes the deficiency judgment unrecoverable, thereby precluding his ability to repay the outstanding second mortgage debt. This reference and assertion about repayment are assertions of facts and circumstances that fall outside the case record. The Board cannot consider new evidence on appeal. *See* Directive ¶ E3.1.29.

Applicant's assertion that the Judge erred by labeling his statements about his interactions with the mortgage lender as contradictory is without merit. After a review of the evidence, the Board concludes that the Judge's evaluation of the statements is supportable.

Applicant claims there were mitigating circumstances to his case that were overlooked. A Judge is presumed to have considered all the evidence in the record unless he or she specifically states otherwise. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009). In this case, the Judge discussed in considerable detail the full circumstances of Applicant's financial difficulties and credited Applicant for the outstanding debt that he was able to retire. Applicant has failed to establish that the Judge did not properly consider all the facts.

The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. *See, e.g.*, ISCR Case No. 06-25157 at 2 (App. Bd. Apr. 4, 2008). As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Applicant's appeal brief essentially argues for an alternate interpretation of the record evidence. After reviewing the Judge's decision in light of the record as a whole, the Board finds no reason to disturb the Judge's analysis. Central to that analysis were the Judge's conclusions that: (1) The lack of documentation concerning Applicant's attempts to resolve the two outstanding delinquent debts undercut his claims and (2) the lack of documented efforts at debt resolution indicate a likelihood that Applicant's financial problems will persist in the future. These conclusions are supported by substantial evidence.

Applicant cites to decisions by the Hearing Office which, he contends, support his case for mitigation. The Board gives these cases due consideration as persuasive authority. However, each case must be decided on its own merits. Nothing in the cases establishes error on the part of the Judge in this case. In any event, Hearing Office cases are binding neither on the Board nor other Hearing Office Judges. *See, e.g.*, ISCR Case No. 11-10178 at 3 (App. Bd. Aug 29, 2013).

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Therefore, the Judge's clearance decision is sustainable.

### Order

The decision of the Judge is AFFIRMED.

Signed: Michael Ra'anan

Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board